

Internal Revenue Service  
District Director

Department of the Treasury

Post Office Box 1680, GPO  
Brooklyn, NY 11202

Date: MAR 26 1998

Person to Contact: [REDACTED]

Contact Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Employer Identification  
Number: [REDACTED]

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that the organization was incorporated in [REDACTED] on [REDACTED].

The specific and primary purposes for which this corporation is formed are to receive and administer funds for educational scholarships to be awarded to citizens of [REDACTED] and who are graduates of an accredited college in [REDACTED] and who have been accepted for a graduate program of an accredited university in [REDACTED] in the student's field of study.

Article VII of your by-laws states that preference in selection shall be given to descendants of the full brothers and sisters of the late [REDACTED] for whom the corporation was formed.

Your planned activities of the Foundation are to seek out qualified students who are citizens of [REDACTED] graduates of an accredited university in [REDACTED], and who have been accepted for a graduate program of an accredited university in [REDACTED] in the student's declared field of graduate study and, upon selection of such a student, to award him or her a scholarship to pay the expenses of such student at such university in [REDACTED]. The Foundation will create the criteria to be used in awarding such scholarship. Provided all academic and other criteria are fulfilled, preference in selection will be given to descendants of the full brothers and sisters of the late [REDACTED] in whose honor the Foundation has been formed.

The foundation's sources of financial support are contributions by the organizing members of the foundation, to wit: [REDACTED] and [REDACTED].

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

In *Better Business Bureau v. U.S.*, 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

The procedural requirements for grants and scholarships are given in detail in Reg. 53.4945-4(b)+(c). The requirements require objective and nondiscriminatory selection. The grants and scholarships must be given in a manner that is consistent with exempt status under 501(c)(3) provisions and must relate to who is eligible for the grants, how the grantee is chosen, and who makes the selection. The group from which the grantee is chosen must be large enough to constitute a charitable class. Selection of the grantee from among the candidates should be related to the purposes of the grant. The persons selecting the grantee should not be in a position to derive a private benefit from the selection. This latter situation can happen in your organization since your activities and bylaws allow for the selection of relatives of the Mukerji family. Selecting personal relatives is considered a private and benefit inurement to the Mukerji family.

It is well established in the law of charities that scholarships and student loans are a charitable endeavor if they are granted on the basis of need, as in Revenue Ruling 66-103, 1966-1 C.B. 134, or merit as in Revenue Ruling 69-257 1969-1 C.B. 151. However, where the payments are to pre-selected specifically



named individuals, as in Revenue Ruling 67 367, 1967 - 2 C.B. 188, exemption is precluded.

In *Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner*, 2 TCM 905 (1943) the tax court upheld the service's position that a trust set up for the benefit of an aged clergyman and his wife was not an exempt organization. Despite the fact that the elderly gentlemen was in financial need, this was a private trust, not a charitable trust.

Similar to the organizations in Rev. Rul. 67-367 and the above court case, your foundation is organized and operated for the benefit to descendants of the full brothers and sisters of the late [REDACTED]. Since your foundation is not operated for the benefit of an indefinite class of individuals, it does not operate within the meaning of section 501(c)(3) of the Internal Revenue Code.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

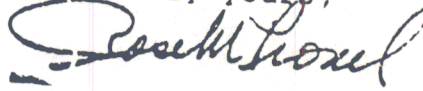
Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of

Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,



District Director

Enclosure: Publication 892

cc:

